



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Carolina Security Patrol, Inc.

File: B-236276

Date: October 5, 1989

DIGEST

Where a letter of credit submitted as a bid guarantee incorporates terms that create uncertainty as to whether the letter would be enforceable against the issuing bank, the letter is unacceptable as a firm commitment within the meaning of the standard bid guarantee clause included in the solicitation, and the bid is nonresponsive.

DECISION

Carolina Security Patrol, Inc., protests the rejection of its bid as nonresponsive for failure to provide an adequate bid guarantee under invitation for bids (IFB) No. MDA946-89-C-0028, issued by the Department of Defense, Washington Headquarters Services, for the procurement of security guard services for its Virginia Heating Plant.

We deny the protest.

The IFB required bidders to submit a bid guarantee in the amount of 20 percent of the bid price. Carolina submitted with its bid an "Irrevocable Standby Letter of Credit" issued by United Carolina Bank. The letter stated that it was governed by the "Uniform Customs and Practice for Documentary Credits, 1983 revision, ICC Publication No. 400" and that "matters not governed by such Uniform Customs and Practice, [will] be governed by and construed in accordance with the laws of the state of North Carolina." It also stated that payment would be made if Carolina "failed to honor their contractual agreement with the Department of Defense"

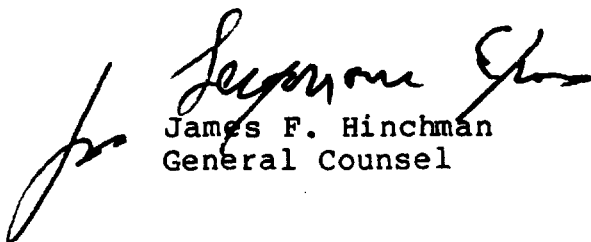
A properly drawn irrevocable letter of credit is a firm commitment to assure the government that a successful bidder will execute contractual documents and provide payment and

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performance bounds as required under the contract. Its purpose is to secure the bank's liability to the government for excess reprourement costs in the event the bidder fails to honor its bid in these regards. The key question in determining the sufficiency of a bid guarantee (irrevocable letter of credit in this instance) is whether the government will be able to enforce it. Imperial Maintenance, Inc., B-224257, Jan. 8, 1987, 87-1 CPD ¶ 34. When the liability of the bank is not clear, the guarantee properly may be regarded as defective and the bid rejected as nonresponsive. BKS Constr. Co., 66 Comp. Gen. 492 (1987), 87-1 CPD ¶ 558.

Dispite the protester's argument to the contrary, we agree with the agency that the liability of the bank is not clear here. We have specifically held that a letter of credit is not an acceptable bid guarantee where, by its language, it is subject to terms contained in a document such as the Uniform Customs and Practice or other undisclosed terms not contained in the letter itself. V. Keeler & Co., Inc., B-231792, Sept. 19, 1988, 88-2 CPD ¶ 260. We consider the enforceability of the bank's obligation uncertain since it is dependent upon terms outside the letter of credit. The letter of credit is, therefore, unacceptable.

The protest is denied.


James F. Hinchman
General Counsel